

AMENDED IN SENATE AUGUST 18, 2000

AMENDED IN SENATE JULY 6, 2000

AMENDED IN SENATE AUGUST 16, 1999

AMENDED IN ASSEMBLY JUNE 1, 1999

AMENDED IN ASSEMBLY APRIL 6, 1999

AMENDED IN ASSEMBLY APRIL 5, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

## ASSEMBLY BILL

**No. 647**

**Introduced by Assembly Member Aroner**

February 23, 1999

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An act to ~~add Section 363.1 to the Public Utilities~~ *amend Section 25733 of, and to add Section 6529 to, the Government Code*, relating to public resources.

### LEGISLATIVE COUNSEL'S DIGEST

AB 647, as amended, Aroner. Upper Mokelumne River Watershed Authority: powers.

**Existing**

(1) *Existing* law authorizes 2 or more public agencies by agreement to jointly exercise any power common to the contracting parties.

A separate body of existing law allows counties to construct, acquire, and develop works for, among other things, the generation of hydroelectric power.

Existing law imposes certain restrictions on the ~~sale of power generated~~ acquisition by counties of existing hydroelectric power generation facilities.

This bill would ~~entitle all~~ exempt certain public entity members of the Upper Mokelumne River Watershed Authority, a joint powers entity, ~~to carry out the purposes for which the authority is established notwithstanding~~ from the provisions of existing law that impose certain restrictions on the ~~sale~~ acquisition of power ~~generated~~ generation facilities by counties.

*The bill would provide that no transfer, assignment, or sale of a specified hydroelectric power generation project to the authority is valid unless the Public Utilities Commission has approved that action under terms that the commission finds to be just and reasonable.*

*The bill would require the commission to appraise any associated lands transferred along with the project in accordance with the existing uses of those lands, rather than highest and best use, when those lands are used or could be used primarily for watershed protection purposes and other uses incidental to watershed protection.*

*The bill would require the authority to create a Watershed Improvement Fund and to use the money in that fund to pay for improvements in environmental quality of the Upper Mokelumne River Watershed affected by the project and for certain other purposes specified in the joint powers agreement governing the authority.*

*The bill would require the authority to transfer \$5,000,000 to the fund at the time of its acquisition of the project, as specified. The bill would require the authority to deposit, on an annual basis, 30% of the net surplus revenues from hydroelectric power generation, as specified in the agreement, in the fund.*

*The bill would create a state-mandated local program by imposing additional duties on the authority.*

(2) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of*

mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

*The people of the State of California do enact as follows:*

1 ~~SECTION 1. — Section 363.1 is added to the Public~~  
2 *SECTION 1. Section 6529 is added to the*  
3 *Government Code, to read:*  
4 *6529. (a) For the purposes of this section, the*  
5 *following terms have the following meanings:*  
6 *(1) The “authority” is the Upper Mokelumne River*  
7 *Watershed Authority described in paragraph (1) of*  
8 *subdivision (b).*  
9 *(2) The “agreement” is the joint exercise of powers*  
10 *agreement governing the authority described in*  
11 *paragraphs (1) and (2) of subdivision (b).*  
12 *(3) “FERC” is the Federal Energy Regulatory*  
13 *Commission.*  
14 *(4) “Project 137” is the series of dams, reservoirs,*  
15 *tunnels, and facilities for the generation of hydroelectric*  
16 *power that is licensed as Project 137 by FERC under the*  
17 *Federal Power Act (16 U.S.C.A. Sec. 791a, et seq.), as*  
18 *amended.*  
19 *(5) “PG&E” means the Pacific Gas and Electric*  
20 *Company.*  
21 *(6) The “Upper Mokelumne River Watershed” means*  
22 *the watershed located on the Mokelumne River east of*  
23 *Pardee Reservoir, as specified in the agreement, in the*  
24 *Counties of Alpine, Amador, and Calaveras.*  
25 *(b) The Legislature finds and declares all of the*  
26 *following:*  
27 *(1) The authority has been formed as a joint exercise*  
28 *of powers authority under Article 1 (commencing with*

1 Section 6500) of Chapter 5 of Division 7 of Title 1 for the  
2 purpose of acquiring, operating, and maintaining Project  
3 137 and associated lands, and to restore and make  
4 improvements to the Upper Mokelumne River  
5 Watershed.

6 (2) (A) The joint exercise of powers agreement  
7 governing the authority was entered into on \_\_\_\_\_,  
8 2000, by the following public entities:

9 (i) Alpine County Water Agency.

10 (ii) Amador Water Agency.

11 (iii) Calaveras County Water District.

12 (iv) Calaveras Public Utility District.

13 (v) East Bay Municipal Utility District.

14 (vi) Jackson Valley Irrigation District.

15 (B) The agreement recognizes the following public  
16 entities as associate members of the authority:

17 (i) County of Alpine.

18 (ii) County of Amador.

19 (iii) County of Calaveras.

20 (3) Pursuant to Section 851, PG&E has petitioned the  
21 commission for approval of a public auction through  
22 which its hydroelectric facilities, including Project 137,  
23 would be transferred to a winning bidder.

24 (4) PG&E has provided evidence to the commission  
25 that Project 137 is no longer necessary or useful in the  
26 performance of PG&E's duties to the public, and that  
27 PG&E no longer wishes to retain Project 137 within the  
28 utility regulated by the commission.

29 (5) Ownership of Project 137 by a private entity may  
30 result in degradation of the environment, as well as health  
31 and safety impacts for local communities and the  
32 watershed that is the primary source of drinking water for  
33 nearly two million residents of Alameda, Amador, and  
34 Contra Costa Counties.

35 (6) It has been proposed to the commission that  
36 acquisition of Project 137 by a public entity, such as the  
37 authority, would serve the public interest by mitigating  
38 water quality, health, recreation, community, and  
39 watershed impacts of changed operations of Project 137  
40 resulting from electrical energy restructuring.

1 (c) For the purposes of the disposition of Project 137,  
2 which is before the Public Utilities Commission, the  
3 transfer, assignment, or sale of Project 137, and associated  
4 lands, is in the public interest only if the transfer,  
5 assignment, or sale is to the authority, and any transfer,  
6 assignment, sale, spin-off, or other divestiture of Project  
7 137 to a private entity would not be in the public interest.

8 (d) No transfer, assignment, or sale of Project 137 to  
9 the authority is valid unless the commission has approved  
10 that transfer, assignment, or sale under terms that the  
11 commission finds to be just and reasonable.

12 (e) The commission shall appraise any associated lands  
13 transferred along with Project 137 in accordance with the  
14 existing uses of those lands, rather than highest and best  
15 use, when those lands are used or could be used primarily  
16 for watershed protection purposes and other uses  
17 incidental to watershed protection.

18 (f) The authority shall create a Watershed  
19 Improvement Fund and shall use the money in that fund  
20 to pay for improvements in environmental quality of the  
21 Upper Mokelumne River Watershed affected by Project  
22 137 and for other purposes specified in the agreement,  
23 including, but not limited to any of the following:

24 (1) Watershed restoration.

25 (2) Watershed assessment.

26 (3) Acquisition of critical watershed lands.

27 (4) Public education.

28 (5) Wildfire management.

29 (6) Water conservation projects.

30 (7) Recreational activities.

31 (g) The authority shall transfer five million dollars  
32 (\$5,000,000) to the Watershed Improvement Fund at the  
33 time of its acquisition of Project 137, as specified in the  
34 agreement. The authority shall deposit, on an annual  
35 basis, 30 percent of the net surplus revenues from  
36 hydroelectric power generation, as specified in the  
37 agreement, in the Watershed Improvement Fund.

38 SEC. 2. Section 25733 of the Government Code is  
39 amended to read:

1 25733. ~~The~~ (a) *Except as authorized under*  
2 *subdivision (b), the power to construct, acquire, develop,*  
3 *operate, and maintain works and facilities for the*  
4 *generation of hydroelectric or wind energy power shall*  
5 *may not include, and nothing in this article shall may be*  
6 *interpreted to allow, the acquisition of property already*  
7 *employed in the generation of hydroelectric or wind*  
8 *energy for public utility purposes, except by mutual*  
9 ~~agreement between~~ *unless the county and the owner and*  
10 *operator of that works or property have entered into a*  
11 *mutual agreement authorizing that acquisition.*

12 (b) *The Counties of Alpine, Amador, and Calaveras, as*  
13 *full members of the Upper Mokelumne River Watershed*  
14 *Authority, a joint exercise of powers authority formed*  
15 *under Article 1 (commencing with Section 6500) of*  
16 *Chapter 5 of Division 7 of Title 1, may acquire existing*  
17 *works, property, and facilities within those counties for*  
18 *the generation of hydroelectric power.*

19 SEC. 3. *Notwithstanding Section 17610 of the*  
20 *Government Code, if the Commission on State Mandates*  
21 *determines that this act contains costs mandated by the*  
22 *state, reimbursement to local agencies and school*  
23 *districts for those costs shall be made pursuant to Part 7*  
24 *(commencing with Section 17500) of Division 4 of Title*  
25 *2 of the Government Code. If the statewide cost of the*  
26 *claim for reimbursement does not exceed one million*  
27 *dollars (\$1,000,000), reimbursement shall be made from*  
28 *the State Mandates Claims Fund.*

29 ~~Utilities Code, to read:~~

30 363.1. ~~(a) The Legislature finds and declares all of~~  
31 ~~the following:~~

32 ~~(1) (A) The Upper Mokelumne River Watershed~~  
33 ~~Authority has been formed as a joint exercise of powers~~  
34 ~~authority, pursuant to Article 1 (commencing with~~  
35 ~~Section 6500) of Chapter 5 of Division 7 of Title 1 of the~~  
36 ~~Government Code.~~

37 ~~(B) As used in this section, "authority" is the Upper~~  
38 ~~Mokelumne River Watershed Authority described in~~  
39 ~~subparagraph (A) and "agreement" is the joint exercise~~

1 of powers agreement described in paragraph (2) for the  
2 purposes described in paragraph (3).

3 (2) The authority is governed by a joint exercise of  
4 powers agreement entered into on \_\_\_\_\_, 2000, by the  
5 following public entities:

6 (A) County of Alpine.

7 (B) County of Amador.

8 (C) Amador Water Agency.

9 (D) County of Calaveras.

10 (E) Calaveras County Water District.

11 (F) Calaveras Public Utility District.

12 (G) East Bay Municipal Utility District.

13 (H) Jackson Valley Irrigation District.

14 (3) The authority was created for the purpose of  
15 acquiring, operating, and maintaining Federal Energy  
16 Regulatory Commission Project Number 137 and  
17 associated lands in order to ensure protection of water  
18 quality, \_\_\_\_\_ environmental \_\_\_\_\_ resources, \_\_\_\_\_ watershed,  
19 recreational interests, and other public interests and  
20 values within the Upper Mokelumne River Watershed  
21 Basin, as defined in the agreement.

22 (b) Notwithstanding Article 8.5 (commencing with  
23 Section 25730) of Chapter 7 of Part 2 of Division 2 of Title  
24 3 of the Government Code, all member agencies of the  
25 authority are entitled to carry out the purposes for which  
26 the authority is established.